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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL ROBERT CHRISTOFF,

Defendant and Appellant.

G049948

(Super. Ct. No. R01859)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Thomas A. Glazier, Judge. Affirmed.

Christopher Love, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

\* \* \*

In 2010, appellant Daniel Robert Christoff pleaded nolo contendere to a complaint alleging several drug offenses and two prior prison terms. He was placed on formal probation for three years and ordered to participate in a drug treatment program.

His probation was revoked and reinstated three months later for another drug offense, which he admitted. Three weeks later, he admitted another drug offense

and probation was again reinstated. Two months later, he admitted another offense and was sentenced to two years in state prison. He completed his prison term and was released, but in February of 2014, he was arrested for a violation of his postrelease community supervision. He denied the offense, and a contested hearing was held at which he was represented by counsel. At the conclusion of that hearing, the court concluded appellant had violated his release agreement, and he was committed to serve 180 days in the Orange County jail.

He appealed, and we appointed counsel to represent him. Counsel did not argue against his client, but advised this court he could find no issues to argue on appellant's behalf. (*People v. Wende* (1979) 25 Cal.3d 436.) Counsel filed a brief which set forth the facts of the case and the only point counsel could imagine might support an appellate issue: sufficiency of the evidence. Christoff was given 30 days to file written argument in his own behalf, but no brief was filed.

We have considered the point raised by counsel – purported omissions from the arresting officer's police report and failure to recall certain facts in his testimony. None is sufficient to raise a serious question about the trial court's decision to credit the officer's testimony. We are not triers of fact. We do not see the witnesses, and nothing in the transcripts of this hearing would cause us to feel the trial court abused its discretion in deciding the facts of the case.

We have also scoured the record for other possible issues. We agree with appellate counsel's implied acknowledgment that the sentencing in the case was not legally objectionable. It was formally correct, and nothing about a six-month commitment for the instant violation seems disproportionate, given appellant's problematic record. Nor can we find any procedural misstep or evidentiary error to undermine the judgment.

This was a one-witness case. A deputy sheriff went to appellant's house for a parole check. He saw appellant walking out of a walk-in closet in one of the bedrooms

that, by all appearances, belonged to appellant. In that bedroom, the deputy found heroin, methamphetamine, and suspected Xanax tablets. He also found pay-owe sheets and a digital scale. He also found paperwork relating to appellant.

Defense counsel succeeded in developing failures in the deputy's recollection of where he found things in the room and pointed out that the deputy had left things out of his police report. The deputy was unable to identify the paperwork he thought linked appellant to the room. It was pretty good defense work.

But it was unsuccessful. No one ever testified it was not appellant's room. Indeed, neither of the other occupants of the house testified, so there was no explanation for appellant walking out of the closet other than the apparent fact it was his closet. At any rate, the testimony did not undermine the trial court's confidence that it was Lee's room. It was not a difficult call on the merits.

Nor was the sentencing objectionable. Appellant got only six months incarceration which, given his background and the nature of the new offense, is well within the bounds of discretion. In short, we can find nothing objectionable in appellant's hearing, sentencing, or representation. We find ourselves in complete agreement with appellate counsel that there is no basis here for an appeal. The judgment is affirmed.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.